

3/9/2016 4:10 pm

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

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THOMAS GESUALDI, LOUIS BISIGNANO,
ANTHONY D'AQUILA, MICHAEL
O'TOOLE, MICHAEL C. BOURGAL,
JOSEPH A. FERRARA, SR., FRANK H.
FINKEL, MARC HERBST, DENISE
RICHARDSON, and THOMAS F. CORBETT, as
Trustees and Fiduciaries of the Local 282 Welfare
Trust Fund, the Local 282 Pension Trust Fund, the
Local 282 Annuity Trust Fund, the Local 282 Job
Training Trust Fund, and the Local 282 Vacation
and Sick Leave Trust Fund,

ORDER
15-CV-0494 (ADS)(GRB)

Plaintiffs,

-against-

BITUMINOUS ROADRUNNER, INC.,

Defendant.

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APPEARANCES:

Cohen, Weiss and Simon LLP

Attorneys for the Plaintiffs

330 West 42nd Street

New York, NY 10036

By: Joseph J. Vitale, Esq.

Michael S. Adler, Esq., Of Counsel

NO APPEARANCES:

Bituminous Roadrunner, Inc.

The Defendant

SPATT, District Judge:

On February 2, 2015, the Plaintiffs Thomas Gesualdi, Louis Bisignano, Anthony D'Aquila, Michael O'Toole, Michael C. Bourgal, Joseph A. Ferrara, Sr., Frank H. Finkel, Marc Herbst, Denise Richardson, and Thomas F. Corbett, as

Trustees and Fiduciaries of the Local 282 Welfare Trust Fund, the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282 Job Training Trust Fund, and the Local 282 Vacation and Sick Leave Trust Fund (collectively, the “Plaintiffs” or the “Funds”) commenced this action against the Defendant Bituminous Roadrunner, Inc. (the “Defendant”), pursuant to Sections 502 and 515 of the Employee Retirement Income Security Act, 29 U.S.C. §§ 1132 and 1154, to recover unpaid fringe benefit contributions and related damages.

On March 9, 2015, the Clerk of the Court noted the Defendant’s default.

On April 22, 2015, the Plaintiffs moved for a default judgment.

On that same day, this Court referred the matter to United States Magistrate Judge Gary R. Brown for a recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded, including reasonable attorneys’ fees and costs.

On February 24, 2016, Judge Brown issued a Report and Recommendation (the “R&R”), recommending that the Plaintiffs’ motion for a default judgment be granted, and damages be awarded as follows: (i) \$11,456.75 for unpaid contributions; (ii) \$14,717.61 in pre-judgment interest; (iii) \$14,717.61 in liquidated damages; (iv) \$886 in audit fees; (v) \$7,761.15 in attorneys’ fees; and (vi) \$462.46 in litigation costs, for a total award of \$50,001.83.

On February 24, 2016, the Plaintiffs filed proof of service of the R&R on the Defendant.

More than fourteen days have elapsed since service of the R&R on the Defendant, who has not filed an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result.

Accordingly, the February 24, 2016 Report and Recommendation is adopted in its entirety, and the Plaintiffs' motion for a default judgment is granted. The Clerk of the Court is respectfully directed to enter judgment in favor of the Plaintiffs in the amount of \$50,001.83, as set forth above, and to close this case.

It is **SO ORDERED**

Dated: Central Islip, New York
March 9, 2016

Arthur D. Spatt

ARTHUR D. SPATT

United States District Judge